

# **SUPPLEMENTAL TRUST INDENTURE**

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT,  
KENTUCKY**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

**DATED AS OF AUGUST 31, 2009**

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## **SUPPLEMENTAL TRUST INDENTURE**

This SUPPLEMENTAL TRUST INDENTURE (the “Supplemental Indenture”), is dated and entered into as of August 31, 2009, by and between the LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY (the “Issuer”), a political subdivision of the Commonwealth of Kentucky (the “Commonwealth”), and U.S. BANK NATIONAL ASSOCIATION, as trustee (the “Trustee”), a national banking association having a designated corporate trust office located in Louisville, Kentucky.

### **RECITALS**

WHEREAS, the Louisville/Jefferson County Metro Government, Kentucky (the “Metro” or “Issuer”) is a political subdivision of the Commonwealth of Kentucky and is authorized by Sections 103.200 to 103.286 of the Kentucky Revised Statutes, as amended (the “Act”), to issue revenue bonds and to loan the proceeds of the bonds in order to accomplish the public purposes of promoting the economic development of the Commonwealth of Kentucky (the “Commonwealth”), relieving conditions of unemployment, and encouraging the increase of industry, provided that such bonds are payable solely from the loan repayments and other revenues derived in respect of the loan and do not constitute an indebtedness of Metro within the meaning of the Constitution and laws of the Commonwealth; and

WHEREAS, Louisville Medical Center, Inc. (“LMC”), a Kentucky nonstock, nonprofit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, seeks (i) to finance the acquisition, construction, equipping and installation of new equipment for the Louisville Medical Center, Inc. Steam and Chilled Water Plant, located at 235 Abraham Flexner Way, Louisville, Kentucky 40202 (the “Plant”); (ii) to pay certain bank debts incurred for the purpose of financing on an interim basis such improvements to the Plant; and (iii) to pay all necessary and reasonable expenses in connection with the issuance of the Bonds including the costs of issuance of the Bonds (collectively, the “Project”); and

WHEREAS, Metro, as the successor political subdivision to Jefferson County, Kentucky (the “County”), pursuant to the Trust Indenture dated as of May 15, 2002, (the “Indenture”) entered into by and between the County and the Trustee as successor to Bank of Louisville, Louisville, Kentucky, and the User Contract dated as of May 15, 2002 (the “User Contract”), entered into by and between the User Institutions, the County and LMC, is authorized to issue Additional Bonds on a parity as to security and source of payment with the 2002 Bonds, as defined in the Indenture and User Contract, to expand or improve the Plant and to finance the Project; and

WHEREAS, all of the conditions precedent to the issuance of Additional Bonds under the Indenture and the User Contract will have been satisfied as of the date of the issuance of the 2009 Bonds (as defined herein); and

WHEREAS, Metro shall issue its Louisville/Jefferson County Metro Government, Kentucky Louisville Medical Center Tax Exempt Revenue Bonds, Series 2009 in the principal amount of \$6,550,000 (the “2009 Bonds”) as Additional Bonds under the Indenture and the User Contract in accordance with this Supplemental Indenture and pursuant to the Act,

NOW, THEREFORE, in order to declare the terms and conditions upon and subject to which the 2009 Bonds are to be issued, held, secured and enforced, and in consideration of the recitals and the acceptance by the Trustee of the trusts created in this Supplemental Indenture and of the purchase and acceptance of the 2009 Bonds by the Purchaser, and for other good and valuable consideration, the receipt of which is acknowledged, the Issuer and the Trustee agree that the Indenture is to be incorporated herein by reference and shall be supplemented by this Supplemental Indenture, as follows:

## ARTICLE I SCOPE

SECTION 1.1. Parity Bonds and Grant of Security. All provisions of the Indenture are hereby ratified, confirmed and approved and unless specifically provided otherwise in this Supplemental Indenture shall apply to and bind the 2009 Bonds, the Issuer, the Trustee and the Purchaser of the 2009 Bonds. This Supplemental Indenture is for the purpose of officially determining and declaring that from and after the execution, issuance and delivery of the 2009 Bonds, such 2009 Bonds are Additional Bonds and parity bonds as to security and source of payment with the 2002 Bonds and shall be entitled to the full security and sources of payment of the Indenture.

SECTION 1.2. Ratification. The Issuer and the Trustee hereby reaffirm, ratify, and confirm all representations, warranties, covenants and agreements contained in the Indenture with respect to the 2002 Bonds and make and agree to the same representations, warranties, covenants, and agreements with respect the 2009 Bonds, as of the date of this Supplemental Indenture.

## ARTICLE II DEFINITIONS

SECTION 2.1. Definitions. All words and terms used in the Indenture shall have the same meanings in this Supplemental Indenture as such terms are given in the Indenture and shall apply to the 2009 Bonds the same as applied to the 2002 Bonds unless otherwise provided in this Supplemental Indenture. In addition to the words and terms defined in the Indenture, the following words and terms shall have the following meanings, unless some other meaning is plainly intended.

“Adjusted Rate” means that interest rate per annum equal to the sum of One-Month LIBOR, as of the applicable Computation Date, plus 300 basis points; provided, that the Adjusted Rate shall never exceed the Maximum Rate.

“Adjustment Date” means the first day of each calendar month which is one month after the date the interest rate was last determined in accordance with the Modified Following Business Day Convention, except that the initial interest rate period shall be from the date of Closing to the first Business Day of the next calendar month.

“Bond Ordinance” means when used with reference to the 2009 Bonds, the ordinance providing for the issuance of the 2009 Bonds and approving the 2009 Loan Agreement, this

Supplemental Indenture, the 2009 Bond Purchase Agreement and related matters. The Bond Ordinance is incorporated herein by reference.

“Bonds” means the 2002 Bonds, the 2009 Bonds and any Additional Bonds.

“Business Day” means a day of the year, other than, (i) a Saturday or Sunday or a legal holiday on which the designated office of the Trustee is not open for the purpose of conducting substantially all of the Trustee's business activities, or (ii) a legal holiday on which the principal offices of commercial banks in New York, New York are closed, or (iii) a day on which the New York Stock Exchange is closed.

“Closing Date” means, with respect to the 2009 Bonds, the date of delivery of and payment for the 2009 Bonds.

“Computation Date” means the second Business Day preceding each Adjustment Date.

“Interest Rate” with respect to the 2009 bonds means the Adjusted Rate.

“Interest Rate Period” means the period commencing on an Adjustment Date and ending on the day preceding the next Adjustment Date.

“Loan” means, with respect to the 2009 Bonds, the loan by the Issuer to LMC of the proceeds received from the sale of the 2009 Bonds.

“Loan Repayments” means, with respect to the 2009 Bonds, the amounts required to be paid by LMC in repayment of the Loan pursuant to the provisions of the 2009 LMC Note and of the 2009 Loan Agreement.

“Maximum Rate” means 12% per annum.

“Modified Following Business Day Convention” means the first following day that is a Business Day unless that day shall fall in the next calendar month, in which case that date shall be the first preceding day that is a Business Day.

“One-Month LIBOR” means the offered rate for U.S. Dollar deposits of not less than \$1,000,000.00 as of 11:00 a.m. City of London, England time as shown on the display designated as “British Bankers Assoc. Interest Settlement Rates” on the Telerate System (Telerate), Page 3750 or Page 3740, or such other page or pages as may replace such pages on Telerate for the purpose of displaying such rate, as of the applicable Computation Date; provided, however, that if such rate is not available on Telerate then such offered rate shall be otherwise independently determined by the Purchaser from an alternate, substantially similar independent source available to the Purchaser or, with the prior approval of LMC, shall be calculated by the Purchaser by a substantially similar methodology as that theretofore used to determine such offered rate on Telerate.

“Payment Date” means the date on which a Loan Repayment is due as referenced and as set forth in the 2009 Bond.

“Prior Debt” means, with respect to the 2009 Bonds, the bank debt incurred by LMC for the purpose of financing on an interim basis improvements to the Plant, in the amount of \$\_\_\_\_\_.

“Project” means, with respect to the 2009 Bonds, (i) the acquisition, construction, equipping and installation of new equipment of the Plant; (ii) the payment of certain bank debts incurred for the purpose of financing on an interim basis such improvements to the Plant; and (iii) the payment of all necessary and reasonable expenses in connection with the issuance of the Bonds including the costs of issuance of the Bonds.

“Purchaser” means Fifth Third Bank, a Michigan corporation and its successors and assignees.

“Supplemental Indenture” means this Supplemental Trust Indenture, as amended or supplemented from time to time.

“2009 Bonds” or “2009 Bond” means the Louisville/Jefferson County Metro Government, Kentucky, Louisville Medical Center Tax Exempt Revenue Bonds, Series 2009 in the principal amount of \$6,550,000 dated as of their date of issuance and authorized in the Bond Ordinance and this Supplemental Indenture.

“2009 Bond Purchase Agreement” means, as to the 2009 Bonds, the Bond Purchase Agreement dated as of or after the date hereof but prior to the initial delivery of the 2009 Bonds, among the Issuer, the Purchaser and LMC.

“2009 Loan Agreement” means the Loan Agreement dated as of even date with this Supplemental Indenture, between the Issuer and the Borrower, as amended or supplemented from time to time.

“2009 LMC Note” means the promissory note of LMC, dated as of even date with the date of issuance of the 2009 Bonds, in the form attached to the 2009 Loan Agreement as Exhibit A and in the principal amount of \$6,550,000, evidencing the obligation of LMC to make Loan Repayments.

### ARTICLE III AUTHORIZATION AND TERMS OF BONDS

SECTION 3.1.     Authorization. The total maximum authorized principal amount of 2009 Bonds which shall be issued under the provisions of this Supplemental Indenture is \$6,550,000.

SECTION 3.2.     Public Approval. On August \_\_, 2009, the County Attorney of the Issuer conducted a public hearing with respect to the 2009 Bonds which was open to the public, and an opportunity was provided at the hearing for all interested persons to comment on the proposed issuance of the 2009 Bonds and the nature and location of the Project. Notice of the public hearing was published on August \_\_, 2009 in The Courier-Journal, a newspaper of general circulation in Jefferson County, Kentucky. The issuance of the Bonds was approved by the elected legislative body of the Issuer, following the public hearing.

SECTION 3.3. Issuance of Bonds. The Issuer shall issue, sell and deliver \$6,550,000 principal amount of 2009 Bonds to provide funds to finance the Project. The 2009 Bonds shall be designated "Louisville/Jefferson County Metro Government, Kentucky, Louisville Medical Center Tax Exempt Revenue Bonds, Series 2009"; shall be issuable only in fully registered form; shall be subject to optional and mandatory redemption in the amounts, upon the conditions and at the times and prices set forth herein; shall be dated as of the date or dates of their initial delivery; and shall be originally issued in the name of the Purchaser.

SECTION 3.4. Bond Register. So long as any 2009 Bonds remain outstanding, the Trustee shall keep at its designated office a Bond Register showing and recording a register of the owners of the respective Outstanding 2009 Bonds and shall provide for the registration and transfer of 2009 Bonds in accordance with the terms of the Bond Ordinance, subject to such reasonable regulations as the Trustee may prescribe.

SECTION 3.5. Interest. The 2009 Bonds shall bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or provided for, from August 31, 2009, payable pursuant to the terms set forth in the Indenture. The 2009 Bonds shall bear interest at the Adjusted Rate. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.

(A) LMC shall pay all Loan Repayments due and payable on the 2009 Bond as more fully provided for in the 2009 Bond, all of which shall be paid exclusively in lawful money of the United States of America and payable to the Trustee, all as set forth in the Indenture.

(B) The Loan Repayments due and payable on the 2009 Bond shall be computed, as follows. the Loan Repayment due and payable on each Payment Date shall equal the sum of the principal component of the Loan Repayment due on that Payment Date as set forth in the 2009 Bond (if any), plus interest accrued to the Payment Date at the Adjusted Rate on the aggregate unpaid principal component or components of the aggregate principal amount of the 2009 Bond. Interest shall accrue from the most recent date on which the principal has been paid or, if no principal has been paid, from the date of Closing. The Purchaser shall provide the Trustee with written notice of the Adjusted Rate in effect for the applicable Interest Rate Period. The Purchaser shall calculate the Adjusted Rate on each Computation Date, and that Adjusted Rate shall be in effect for the applicable Interest Rate Period immediately following that Computation Date. The Trustee shall give written notice of the Adjusted Rate to LMC promptly following each Computation Date. The Trustee shall calculate the Loan Repayment due and payable on each Payment Date on the Computation Date immediately preceding each Payment Date and shall give written notice of the amount of that payment to LMC promptly following that Computation Date. The Adjusted Rate as calculated pursuant to this Supplemental Indenture shall take effect pursuant to the terms of the Indenture regardless of any failure of the Trustee to give or failure of LMC to receive any notice pursuant to this Section.

SECTION 3.6. Maturity. Subject to the prior redemption of the 2009 Bonds, the 2009 Bonds shall mature on the first day of May, 2014.

SECTION 3.7. Delivery of Bonds. Upon the execution and delivery of this Supplemental Indenture, and satisfaction of the conditions established by the Issuer in the Bond Ordinance and in the 2009 Bond Purchase Agreement for delivery of the 2009 Bonds, the Issuer shall execute the 2009 Bonds and deliver them to the Trustee. Thereupon, the Trustee shall authenticate the 2009 Bonds and deliver them to the Purchaser, as directed by the Issuer in accordance with this Article III.

SECTION 3.8. Form, Execution and Authentication of Bonds. The 2009 Bonds, the certificate of authentication and the form of assignment shall be substantially in the form set forth in Exhibit A to this Supplemental Indenture with respect to the 2009 Bonds. All Bonds shall be in fully registered form.

#### ARTICLE IV APPLICATION OF BOND PROCEEDS

SECTION 4.1. Deposits of Bond Proceeds to Funds. Upon the sale of the 2009 Bonds, the Issuer shall immediately deposit the proceeds of such sale with the Trustee. The Trustee shall distribute the proceeds from the sale of the 2009 Bonds as follows:

(A) to the Prior Debt and Property Purchase Fund, the amount of \$\_\_\_\_\_ for the payment of such amount to Fifth Third Bank, Louisville, Kentucky to pay and redeem the indebtedness incurred by LMC for the purpose of financing on an interim basis improvements to the Plant;

(B) to the Cost of Issuance Fund, an amount equal to all projected Issuance Costs;

(C) to the Bond Fund, an amount equal to the accrued interest, if any, collected from the purchaser of the 2009 Bonds for the period from the date of the 2009 Bonds to the date of delivery; and

(D) to the Construction Fund, an amount equal to the balance of the proceeds remaining from the sale of the 2009 Bonds.

SECTION 4.2. Prior Debt and Property Purchase Fund. The Trustee shall pay to Fifth Third Bank, Louisville, Kentucky from the Prior Debt and Property Purchase Fund an amount equal to the Prior Debt and such amount shall be paid to Fifth Third Bank on or before August 31, 2009. Any balance remaining in the Prior Debt and Property Purchase Fund after payment of the Prior Debt shall be transferred and deposited by the Trustee in the Construction Fund.

SECTION 4.3. Cost of Issuance Fund. Amounts shall be disbursed from the Cost of Issuance Fund by the Trustee on or about the Closing Date for the proper cost of issuance of the 2009 Bonds. Payments from the Cost of Issuance Fund shall be made by the Trustee only upon receipt of vouchers signed by the Authorized Borrower Representative approving each payment and attaching the invoice to be paid. If at any time the amount on deposit in the Cost of Issuance Fund is in excess of the amount currently necessary to meet authorized expenditures therefrom, such excess shall be invested in Eligible Investments. All amounts remaining in the



Cost of Issuance Fund after receipt by the Trustee from LMC of a certificate indicating that all costs of issuance have been paid, Trustee shall deposit the balance remaining in the Cost of Issuance Fund, if any, in the Construction Fund.

#### SECTION 4.4. Bond Fund.

(A) LMC shall transfer, or cause to be transferred to the Trustee from the Revenue Fund, all or such portion of the income and revenues from the operation of the Plant as will be sufficient to pay the interest on, principal of, and premium, if any, of the 2002 Bonds and the 2009 Bonds. The required payments to the Trustee for deposit into the Bond Fund and payments by the Trustee of the 2002 Bonds and 2009 Bonds shall be made in accordance with the terms of the Indenture. Except as provided herein and in the Indenture, the Bond Fund (and any accounts therein) and the moneys and Eligible Investments therein shall be used solely and exclusively for the payment of the 2002 Bonds and the 2009 Bonds as they fall due at stated maturity, or by redemption or upon acceleration, all as provided herein and in the Indenture. The moneys and Eligible Investments to the credit of the Bond Fund shall constitute a part of the Revenues assigned to the Trustee as security for the payment of the 2002 Bonds and 2009 Bonds on a parity basis.

(B) Moneys in the Bond Fund shall be used to pay Debt Service with respect to the Bonds and for the redemption of the 2002 Bonds and the 2009 Bonds prior to maturity and as otherwise provided in the Indenture and in this Supplemental Indenture. The Trustee shall withdraw from the Bond Fund the amount required for paying the interest, principal and premium, if any, on the 2002 Bonds and the 2009 Bonds on the applicable due date. Any amounts held in the Bond Fund for the credit of a redemption event shall be applied to the optional, extraordinary mandatory or extraordinary optional redemption of the applicable Bonds on the applicable date.

#### SECTION 4.5. Construction Fund.

(A) Amounts shall be disbursed from the Construction Fund by the Trustee from time to time for the proper costs of the completing the acquisition, construction, equipping and installation of new equipment at the Plant as part of the Project. Without limiting the generality of the foregoing, such disbursements shall include architects' and engineering fees, legal fees, initial Trustee's fees and payments to contractors, materialmen and suppliers of equipment. Payments from the Construction Fund shall be made by the Trustee only upon receipt of vouchers approved by the Trustee and signed by the Authorized Borrower Representative. At any time the amount on deposit in the Construction Fund is in excess of the amount currently necessary to meet authorized expenditures therefrom, such excess shall be invested in Eligible Investments, provided such investment must have a maturity date or be subject to redemption at the option of the holder within the time when the proceeds of such obligations will be needed for the purposes of such Construction Project. Subject to any and all applicable legal provisions and applicable arbitrage regulations necessary to assure the exemption of the interest on the 2009 Bonds from Federal income taxation and after the Trustee receives from LMC a completion certificate in a form approved by the Trustee and the purpose of the Construction Fund has been accomplished, all amounts remaining in such Construction Fund shall be deposited to the credit of the Bond Fund.

SECTION 4.6. Arbitrage Rebate Fund. Issuer shall cause LMC to prepare and file with the Trustee and Issuer a report setting forth the “Rebate Amount” determined in accordance with the 2009 Loan Agreement and deposit or cause to be deposited into the Arbitrage Rebate Fund any and all Rebate Amounts promptly following a determination of a Rebate Amount. The Trustee shall keep all moneys in the Arbitrage Rebate Fund fully invested in direct obligations of the United States Government, as directed by LMC and it will disburse all moneys in the Arbitrage Rebate Account to the United States at the times and in the manner required by the Code. Moneys in the Arbitrage Rebate Account, including investment earnings thereon, if any, shall not be subject to the pledge of this Supplemental Indenture and shall not constitute part of the security held for the benefit of the Bondholders.

SECTION 4.7. Moneys to be Held in Trust. Except where moneys have been deposited with or paid to the Trustee pursuant to an instrument restricting their application to particular Bonds, all moneys required or permitted to be deposited with or paid to the Trustee under any provision of this Supplemental Indenture or the 2009 Loan Agreement, and to be used to pay, the Prior Debt, the Bonds or the 2009 LMC Note, and any investments thereof, shall be held by the Trustee in trust. Except for moneys deposited with or paid to the Trustee for the redemption of Bonds, and for moneys held by the Trustee pursuant to Section 3.8 hereof, all moneys held by the Trustee shall be subject to the lien of this Supplemental Indenture while so held.

## ARTICLE V REDEMPTION OF BONDS

SECTION 5.1. Redemption. The 2009 Bonds are subject to redemption under the same circumstances and conditions as set forth in the Indenture subject to the following:

(A) Optional Redemption. The 2009 Bonds are subject to Optional Redemption on any Business Day at the option of the LMC, upon written direction from LMC to the Issuer and the Trustee at least 45 days prior to the Redemption Date (followed by written notice from the Trustee to the bondholder at least 30 days prior to the Redemption Date), from amounts deposited with the Trustee by LMC and from any other funds legally available therefor, as a whole or in part, at a redemption price equal to the following percentages of the principal amount to be redeemed, plus in each case accrued but unpaid interest to the Redemption Date:

<u>Redemption Period (dates inclusive)</u>	<u>Redemption Price</u>
August __, 2009 through August __, 2010	102%
August __, 2010 and thereafter	100%

(B) No Mandatory Sinking Fund Redemption. The 2009 Bonds shall not be subject to mandatory sinking fund redemption.

ARTICLE VI  
MISCELLANEOUS

SECTION 6.1. Priority of Indenture and Supplemental Indenture. This Supplemental Indenture shall be in full force and effect from and after its execution, attestation and delivery as provided by law. The Indenture and this Supplemental Indenture shall be superior to any liens which may be placed upon the Revenues or any other funds or accounts created pursuant to this Supplemental Indenture.

SECTION 6.2. Governing Law. This Supplemental Indenture shall be governed by and enforced in accordance with the laws of the Commonwealth of Kentucky.

SECTION 6.3. Interpretation. Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

[Signature page follows]

IN WITNESS WHEREOF, the Issuer and the Trustee have executed this Trust Supplemental Indenture all as of the date first above written.

[SEAL]

LOUISVILLE/JEFFERSON COUNTY METRO  
GOVERNMENT, KENTUCKY

Attest:

\_\_\_\_\_  
Kathleen J. Herron, Metro Council Clerk

\_\_\_\_\_  
Jerry E. Abramson  
Major

Approved as to form and legality:

Mike O'Connell  
Jefferson County Attorney

By \_\_\_\_\_  
James T. Carey  
Assistant Jefferson County Attorney

U.S. BANK NATIONAL ASSOCIATION

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

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